IN THE HIGH COURT OF JUDICATURE AT BOMBAY

Appellate Side

Writ Petition No.3200 of l993

Shri Jagannath Jyoti Yadav .Petitioner

vs.

Damodar Shankar Patil & ors. ...Respondents

Mr.M.D.Angal for petitioner

Mr M.R.Katikar for respondents

Mr.V S Gokhale AGP for State

CORAM: A.P.SHAH & D.Y.CHANDRACHUD JJ.

l7th August 2005

P.C.

l. This petition takes exception to the order of the Tahasildar and Authorised Officer, Tasgaon dated 30.6.l993 dismissing the application made by the petitioner under the provisions of the Maharashtra Debt Relief Act, l975, hereinafter for brevity's sake referred to as the "Act". The petition has a chequered history. The petitioner's late father Jyoti Yadav was the owner of agricultural land bearing Gat No.305 (old Survey No 37)admeasuring 0.97 Ares situated at village Gavhan, Taluka Tasgaon, District Sangli, hereinafter referred to as the "said land". In or about October l937 the father of the petitioner

mortgaged the said land to one Gangabai Sakpal for a loan of Rs.250 and possession was also delivered to the -mortgagee. It was a possessory mortgage for l0 years. During the mortgage period the mortgagee was entitled to take usufructs of the land and mortgagor was entitled to redeem the mortgage only after mortgage period. The deed further mentioned that in case the mortgagor failed to pay mortgage amount after mortgage period the mortgagee was authorised to foreclose the mortgage by selling the land. The mortgagee Gangabai did not file any suit for foreclosure and continued to be in possession of the land.She died in l982. Respondent Nos. Al to A8 are her legal representatives. As the petitioner's father was not in a position to repay the loan, he also did not file any suit for redemption of the mortgage . After the death of the petitioner's father, petitioner has inherited the rights in respect of the said land.

2. At this stage it may be mentioned that the deceased Gangabai had filed Civil Suit No.l29 of l978 against the petitioner in the court of Civil Judge, Junior Division Tasgaon for permanent injunction restraining the petitioner from

interfering with her possession with regard to the said land. In that suit the petitioner had pleaded that his father redeemed the mortgaged land and was in possession of the said land and therefore the deceased respondent was not entitled to injunction as prayed for. However, the trial court held that the petitioner's father had not redeemed the mortgage and that the mortgagee was in possession of the said land. The trial court accordingly decreed the suit and restrained the petitioner from causing any obstruction to the respondents' possession otherwise than in due course of law.

3. In the meanwhile the Legislature enacted Maharashtra Debt Relief Act which came into force on 22.8.l975. Section 4 of the Act provides for discharge of debts not exceeding Rs.20,000 in market value and every property pledged or mortgaged by such debtor shall stand released in favour of the debtor and the creditor shall be bound to return the same to the debtor forthwith on the debtor making an application in writing in that behalf and the creditor shall pass a receipt to the debtor of having received the application and get endorsement on the application under the signature of the authorised officer or by any person

authorised by him in that behalf. The petitioner applied to the Tahasildar and Authorised Officer, Tasgaon for discharge of the debt and possession of the land . That application was numbered as Karjmukti Sr l/80 on the file of the Tahasildar, who issued notice to the petitioner and deceased Gangabai. The deceased remained absent though she was served and the Tahasildar allowed the application by his order dated 28.5.l980 holding that the petitioner was a marginal farmer and that he was the debtor within the meaning of the Act and so mortgage loan has been extinguished. Consequently, the Tahasildar ordered delivery of the possession of the land to the petitioner. The deceased Gangabai then filed Writ Petition No.3583 of l980 in this Court and this Court directed the deceased to apply to the Tahasildar for setting aside the exparte order passed against her. The deceased accordingly made an application on 4.7.l987 to the Tahasildar for setting aside the exparte order dated 28.5.l980. That application however came to be rejected on 6.7.l987.

4. The deceased challenged the order of the Tahasildar dated 6.7.l987 by filing Writ Petition No.2725 of l98l in this Court. The petition was

admitted and interim stay of execution of the order of the Tahasildar was granted. The petition was thereafter dismissed for non removal of office objections . The legal representatives of the deceased i.e. respondent nos Al to A8 who were brought on record after the death of the deceased made an application for setting aside the order of refusal of registration and taking the said petition on file. This Court restored the petition subject to condition of handing over the possession of the land to the petitioner. In pursuance of this condition the respondents handed over possession of the land to the petitioner on l8.9.l989. Thereafter the writ petition was restored and was heard on merit and by order dated 28.8.l990 order of the Tahasildar was set aside and the matter was remanded back to the Tahasildar for giving an opportunity to both the parties to lead evidence. This court directed that in case Tahasildar rejects the application for discharge of the debt then the possession of the suit land shall be restored to the respondents.

5. In pursuance of the directions issued by this Court the Tahasildar recorded statement of the petitioner and also recorded statement of

respondent no.Al i.e. Damodar Patil on behalf of the respondents. By his order dated l3.6.l993 the Tahasildar rejected the application made by the petitioner. It was held that the petitioner has not produced original mortgage deed and the certified copy thereof produced by him, cannot be read in evidence, that the petitioner failed to prove his ownership with regard to the suit land and therefore it was held that no mortgage transaction has taken place between the parties and in any event the claim was time barred since petitioner ought to have filed suit for redemption within 30 years from the date of mortgage. As no such suit was filed, right of redemption has been extinguished and petitioner has no right to claim for discharge of the debt.

6. We have heard the learned counsel for the parties. In our opinion it is impossible to sustain the order of the Tahasildar . In the first place the Tahasildar was not right in holding that the certified copy of the mortgage deed produced by the petitioner could not be read in evidence. The Tahasildar ought to have seen that petitioner being a mortgagor could not be in possession of the original mortgage deed and he produced certified

copy thereof and it was wrong to insist that the petitioner ought to have produced the original mortgage deed. It may also be noted that in the suit which was filed by the deceased Gangabai the trial court has accepted the case of the petitioner that in the year l937 his father had mortgaged the land to the deceased. The trial court, however, rejected the case of the petitioner that he had redeemed the mortgage and held that the deceased Gangabai continued to be in possession of the land. Thus the Tahasildar has committed serious error in law in holding that there was no mortgage transaction between the parties. The Tahasildar was also wrong in holding that the claim of the petitioner was barred by limitation. He has lost sight of the fact that the limitation for redemption of mortgage prior to l963 was 60 years after expiry of the mortgage period and by virtue of the Limitation Act, l963 the period has been made as 30 years. In the present case the mortgage period was l0 years and so the limitation for redemption would start only from l7.l0.l947. Therefore the right for redemption of the mortgage was in existence on the date when the Act was brought in force on 22.8.l975 and by virtue of section 4 the debt being not in excess of Rs.20,000

stood discharged by operation of law.

7. The petitioner is a marginal farmer and is working as a agricultural labourer. His total holding including the land in question is not more than 3.5 acres. The petitioner’s sons are also working as agricultural labourers . It is seen from the order that the petitioner had produced before the Tahasildar requisite certificate showing that the petitioner is a marginal farmer. . Learned counsel appearing for the respondents, however, strenuously urged that in the civil court the petitioner had taken a stand that the mortgage was redeemed and he admitted in his cross examination of having taken such a plea before the civil court. Therefore the petitioner’s application for discharge of debt was clearly not mainainable in law. We are not impressed by the argument of the learned counsel. The petitioner is a illiterate person and he has no personal knowledge of the transaction. Although before the civil court he took a plea that the mortgage was redeemed, this was opposed by the respondents on the ground that the mortgage was not redeemed and trial court also held that the mortgage was not redeemed and the mortgagee continued to be in

possession. Under the circumstances, petitioner is clearly entitled to the benefit of the provisions of the Act. Therefore the impugned order of the Tahasildar is quashed and set aside. The application of the petitioner is hereby granted and it is declared that the loan taken under the mortgage deed stood extinguished. However,no consequential order is necessary since possession is already restored to the petitioner . Petition stands disposed of accordingly with no order as to costs. Certified copy expedited.